

EXHIBIT F

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 and Case No. 14-CV-704-GFK-JFJ
6 OSAGE MINERALS COUNCIL,
7 Intervenor-Plaintiff,
8 vs.
9 OSAGE WIND, LLC;
10 ENEL KANSAS, LLC; and
11 ENEL GREEN POWER NORTH
12 AMERICA, INC.,
13 Defendants.

14
15 VIDEO ZOOM DEPOSITION OF MICHAEL STORCH
16 TAKEN ON BEHALF OF THE INTERVENOR-PLAINTIFF
17 ON JUNE 28, 2021, BEGINNING AT 9:06 A.M.

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22
23
24 VIDEOTAPED BY: Stesha Snow
25 REPORTED BY: D. Luke Epps, CSR, RPR

[illegible]

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1 MS. STEVENSON: Object to the form.

2 THE WITNESS: But I -- I have no idea.

3 **Q (BY MS. NAGLE) Okay. All right. So do**

4 **you know who would know why Rosette was taken out of**

5 **the memo? Is there someone who you think would have**

6 **the answer to that question?**

7 A I'm going to take a wild guess and suggest

8 the author, but that's just a guess.

9 **Q And so that would be either Lynn Slade or**

10 **Bill Scott; is that correct?**

11 A They're the names on the memo, so, yes.

12 **Q Okay. Do you know of any other names of**

13 **individuals who would have worked on this memo**

14 **besides Bill Scott or Lynn Slade?**

15 A Again, that's internal to the firm, so

16 I -- I have no idea.

17 **Q Okay. All right. So if we go to page 5,**

18 **Exhibit 81 -- let me see here. And so I'm looking**

19 **at this language right here. It says, "The**

20 **reservation of the mineral rights reserved under the**

21 **SH" -- sorry, "SRHA is similar to that of the Osage**

22 **Allotment Act, although the contemplated surface**

23 **uses under the SRHA are perhaps narrower than the**

24 **general grant of surface rights for patentees under**

25 **the Osage Allotment Act." What is your**

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1 **understanding of the significance of that sentence**

2 **here in this memo?**

3 A Well, it suggests that the Osage Allotment

4 Act is broader in terms of the ability of the

5 surface rights to be used by the holders of the

6 surface rights, if I'm reading that correctly, and

7 that the other act refers to something that is more

8 restrictive or narrower in terms of what is

9 contemplated.

10 **Q Uh-huh. I will note that in the prior**

11 **version of the memo -- my apologies. Let me turn**

12 **that off. Let's see if we can find it here. Now,**

13 **I'm going to have to actually remember exactly where**

14 **it's at. Okay. Here we go. The bottom of page 4,**

15 **for Exhibit 36, it states, "The mineral rights**

16 **reserved under the Stock-Raising Homestead Act are**

17 **done so in language similar to that of the Osage**

18 **Allotment Act." I don't see any language here about**

19 **one being narrower than the other. It appears that,**

20 **in Exhibit 81, this language, you know, "although**

21 **the contemplated surface uses under the SRHA are**

22 **perhaps narrower than the general grant," do you**

23 **know when, in the performance of the legal analysis,**

24 **the determination was made in terms of which of the**

25 **two statutes were narrower than the other?**

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1 A I don't know how many times I'll need to

2 say this during this conversation, but I had nothing

3 to do with the drafting of this memo, provided no

4 input, saw no drafts, made no comparison between the

5 previous one and this one. I simply confirmed that

6 the conclusions reached were comforting and a basis

7 for us to feel very comfortable in continuing to

8 move the project forward.

9 **Q Okay.**

10 A The comparison, it's not that it means

11 nothing, but it doesn't mean anything to me, you

12 know, in the context of the decision process around

13 the project and moving it forward.

14 **Q Uh-huh. Did you -- was there ever a point**

15 **in time, at any point in this process, when you**

16 **personally believed that perhaps a permit might be**

17 **required or you weren't sure whether a permit from**

18 **the Osage Nation would be required?**

19 A No. I mean, you know, when I first became

20 aware of this, we had the benefit of the 2013, you

21 know, memo, so there was no reason to be anything

22 other than 100 percent confident because, again, it

23 wasn't written in a way that was more likely than

24 not or some wishy-washy kind of language. It was

25 quite conclusive.

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1 **Q Uh-huh.**

2 A The only time doubts arose would have been

3 in -- when the decision was made suggesting

4 otherwise back in 2017.

5 **Q Okay. So let's -- I'd like to show**

6 **another exhibit, and let me just pull that up. And**

7 **so this is going to be, I believe, Exhibit 82, and I**

8 **will show it here in just a moment. This is a**

9 **document Bates stamped Osage Wind-040087, and it**

10 **looks like this top email here is from you to Joan**

11 **Heredia and quite a few folks, from November 4th,**

12 **2014. Does this email exchange look familiar to**

13 **you?**

14 (Exhibit 82 marked for identification.)

15 A I'm sorry. Repeat that.

16 **Q So I was just asking if this email**

17 **exchange looks familiar to you.**

18 A Yeah. I vaguely remember it.

19 **Q Okay. So -- let me see. If we go down to**

20 **the very bottom of this email exchange, it's quite a**

21 **long one, it sort of concludes here on Bates stamp**

22 **040091, really quick, who is Jack -- I don't know if**

23 **I'm going to pronounce this correct, Thirolf?**

24 A Jack. Yeah. He's, you know, part of our

25 communication team. At this time he may have